

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BELLSOUTH TELECOMMUNICATIONS, INC.)	
D/B/A AT&T SOUTHEAST D/B/A AT&T)	
KENTUCKY)	
)	
COMPLAINANT)	
)	CASE NO.
V.)	2010-00026
)	
LIFECONNEX TELECOM, LLC F/K/A)	
SWIFTEL, LLC)	
)	
DEFENDANT)	

O R D E R

On June 26, 2010, BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky ("AT&T Kentucky") filed a document titled "Notice of Commencement of Treatment Pursuant to Current Interconnection Agreement" notifying the Commission that AT&T Kentucky was on the verge of suspending, discontinuing, and/or terminating the service it provides LifeConnex Telecom, LLC f/k/a Swiftel, LLC ("LifeConnex") for lack of payment.

LifeConnex is a competitive local exchange carrier ("CLEC") that resells services purchased from AT&T Kentucky to its own customers. AT&T Kentucky charges LifeConnex for the purchased service and LifeConnex, under applicable circumstances, is eligible to receive credit for promotions and other discounts that AT&T Kentucky provides to its own customers. LifeConnex then subtracts these credits from the total it

remits to AT&T Kentucky for service purchased. On January 22, 2010, AT&T Kentucky filed this complaint against LifeConnex alleging that LifeConnex was incorrectly claiming promotional credits while making remittance to AT&T Kentucky for the purchase of services. AT&T Kentucky requested that the Commission find that LifeConnex incorrectly withheld payment from AT&T Kentucky and order that payment of the past-due amounts be made to AT&T Kentucky.¹

AT&T Kentucky alleges that, although the billing dispute is the reason for its complaint against LifeConnex, LifeConnex is obligated under the parties' interconnection agreement to continue to pay both disputed and undisputed charges. The pertinent tariff language states, "[LifeConnex] shall make payments to AT&T for all services . . . payment for services provided by AT&T, including disputed charges, is due on or before the next bill date."² Attachment 7 of the parties' interconnection agreement states, in part, that "[p]ayment of all charges will be the responsibility of Swiftel, LLC [LifeConnex]. . . . Swiftel, LLC [LifeConnex] shall make payment to AT&T for all services billed including disputed amounts."³

AT&T Kentucky alleges that LifeConnex has paid less than four percent of the net amount billed to LifeConnex since December 2009.⁴ AT&T Kentucky asserts that it is within its rights to invoke Section 1.5 of the parties' interconnection agreement that

¹ AT&T Kentucky Complaint at 9.

² Interconnection Agreement, Section 1.4.

³ Interconnection Agreement, Attachment 7, Section 1.4, at 6.

⁴ AT&T Kentucky's Notice of Commencement of Treatment at 2.

allows AT&T Kentucky to suspend, disconnect, and/or discontinue service to LifeConnex for the unpaid bills.⁵

In response, LifeConnex asserts that, as the billing dispute is ongoing, AT&T Kentucky should not be allowed to collect disputed amounts.⁶ LifeConnex also argues that, because AT&T Kentucky had heretofore not required LifeConnex to pay disputed charges, AT&T Kentucky should not be allowed to change its practices now and demand payment.⁷ LifeConnex argues that Section 8 of the parties' interconnection agreement allows the parties to seek Commission review of any dispute arising out of the interconnection agreement. Section 8 states:

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party, if it elects to pursue resolution of the dispute, shall petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

On May 20, 2010, the parties moved jointly for the issuance of a procedural schedule and to hold in abeyance all pending motions in this proceeding. In the May 20, 2010 motion, the parties jointly stated that nothing in the motion "is intended, or shall be construed, as a waiver of any Party's . . . right to . . . pursue any issue, claim, or counterclaim that is not addressed in the Consolidated Phase in each Party's respective docket, either concurrent with or following the Consolidated Phase, or to seek such

⁵ Id. at 3.

⁶ Petition of LifeConnex Telecom, Inc. (f/k/a Swiftel) Concerning Implementation of Its Interconnection Agreement with AT&T and Emergency Motion to Prevent Suspension of Service at 7, filed July 1, 2010.

⁷ Id. at 7.

other relief as a change in circumstances may warrant.”⁸ On June 17, 2010, the parties submitted another joint motion for the issuance of a procedural schedule⁹ and asked for permission to file a status report on the progress of negotiations and discovery no later than November 1, 2010. By Order dated July 14, 2010, the Commission placed this proceeding in abeyance and ordered the submission of a status report by November 1, 2010.

However, on July 26, 2010, AT&T Kentucky provided written notice to the Commission of its intent to disconnect LifeConnex for nonpayment of bills. AT&T Kentucky requested authorization to invoke the Emergency Service Continuity Tariff approved by this Commission on May 20, 2003 in Case No. 2002-00310.¹⁰ Invoking this tariff is necessary only if LifeConnex has not notified its end-users of the service disconnection. If the Emergency Service Continuity Tariff is invoked, AT&T Kentucky will continue to provide telephone service to LifeConnex’s customers for a minimum of 14 days after LifeConnex ceases to operate. In that notice, AT&T Kentucky states that disconnection of LifeConnex will affect less than 2,200 Kentucky customers. The primary obligation to notify end-users of the proposed disconnection of service rests

⁸ The phrase “Consolidated Phase” refers to the parties’ request to consolidate the LifeConnex case with three other Commission proceedings filed simultaneously against other competitive carriers centering on the same issues. The parties also note that there are identical proceedings involving all four carriers and AT&T before the commissions in eight other southern states. Joint Motion at 2, as filed on May 20, 2010.

⁹ The parties propose to submit a joint schedule that would be identical to a joint schedule submitted for approval before the commissions in the eight other southern states referenced in fn. 8.

¹⁰ Case No. 2002-00310, Customer Billing and Notice Requirements for Wireline Telecommunications Carriers Providing Service in Kentucky (Ky. PSC May 20, 2003).

with LifeConnex until such time as the Commission allows AT&T Kentucky to invoke its Emergency Service Continuity Tariff. Under this tariff, AT&T Kentucky would be required to notify the affected end-users and inform them that they may continue to receive telecommunications services through the Emergency Service Continuity Plan for a minimum of 14 days and that the end-user must make provisions to transition to a new service provider.

Prior to filing the notice of intent to disconnect, AT&T Kentucky filed with the Commission, on June 22, 2010, a schedule of the billed amounts, payments made, and the current balance of the amount due to AT&T Kentucky under confidential protection.¹¹ The Commission has reviewed the schedule and finds that a significant amount is owed by LifeConnex. The Commission finds that, although the parties agreed to place this proceeding in abeyance while discovery and settlement efforts move forward, AT&T Kentucky has invoked its right to disconnect services to LifeConnex and LifeConnex is a willing party to an existing interconnection agreement containing provisions requiring payment of disputed charges pursuant to Section 1.5 and Attachment 7 of that agreement. Based on the information provided, LifeConnex has failed to render payment for unpaid charges which, at best, can be categorized as substantial. Despite the rounds of joint motions submitted by the parties and their stated intentions of pursuing negotiations for partial settlement of the claims in this

¹¹ The petition was filed on June 22, 2010. The Commission granted protection to this information by letter dated August 10, 2010. For this reason, the exact amount owed by LifeConnex will not be outlined in this Order. However, at paragraph 17 in its petition concerning implementation of its interconnection agreement, as filed on July 1, 2010, LifeConnex notes that AT&T Kentucky alleges it owes in excess of \$1.8 million for all services billed.

proceeding, the underlying issue of nonpayment by LifeConnex is ongoing. The Commission also notes that LifeConnex was a willing signatory to the portion of the May 20, 2010 joint motion which allowed either party to pursue any claim or issue not addressed as part of that motion. The Commission finds that the abeyance, as granted by Order on July 14, 2010, does not serve as any type of bar to AT&T Kentucky's Notice of Commencement of Treatment or the Notice of Intent to Disconnect. Therefore, although the underlying question of whether LifeConnex is entitled to receive certain credits when it resells services that are the subject of certain promotional offers has not been resolved, that fact cannot be used to supersede LifeConnex's existing payment obligations for services rendered, as outlined in the current interconnection agreement. The Commission finds that AT&T Kentucky is entitled to move forward with disconnection of services.

The Commission, having reviewed the pleadings and having been otherwise sufficiently advised, HEREBY ORDERS that:

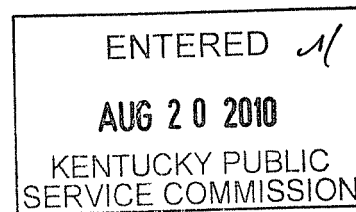
1. LifeConnex shall notify the Commission, within seven calendar days of the date of this Order, of its intent to pay the delinquent bill to AT&T Kentucky within 10 days of the date of this Order or, in the alternative, of its intent to notify its end-users of the proposed service disconnection. Such written comments shall include a copy of LifeConnex's customer notice and an affidavit indicating when the notice was mailed and the number of Kentucky customers to whom it was mailed.

2. A copy of AT&T Kentucky's Notice of Intent to Disconnect LifeConnex is attached hereto in the Appendix and incorporated herein.


3. If LifeConnex has not responded as prescribed in ordering paragraph 1 within seven calendar days of the date of this Order, AT&T Kentucky shall implement the procedures established in its Emergency Service Continuity Tariff.

4. The Executive Director shall send a copy of this Order by certified mail to LifeConnex.

By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2010-00026 DATED **AUG 20 2010**



Tony Taylor
Executive Director

AT&T
601 W. Chestnut Street
4th Floor
Louisville, KY 40203

T: 502-582-2164
F: 502-582-8667
Tony.Taylor@att.com

July 23, 2010

RECEIVED

JUL 26 2010

PUBLIC SERVICE
COMMISSION

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602-0615

2010-00026

Dear Mr. Derouen:

Pursuant to the Kentucky PSC's May 20, 2003 order in KY PSC Case No. 2002-0310, AT&T Kentucky is providing notice to the Kentucky Public Service Commission (PSC) of AT&T Kentucky's intent to disconnect LifeConnex Telecom, Inc. (f/k/a Swiftel, LLC) ("LifeConnex") for non-payment.

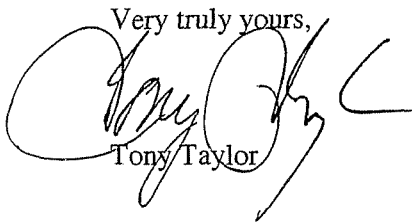
AT&T Kentucky's records indicate that LifeConnex is delinquent in payment of its bills to AT&T Kentucky. Attempts to collect past due amounts from LifeConnex have been unsuccessful. AT&T made numerous written notifications to LifeConnex informing them of AT&T's intent to suspend or terminate services consistent with the terms and conditions of the Interconnection Agreement between LifeConnex and AT&T Kentucky. As of today, AT&T Kentucky has received no payment from LifeConnex and we seek to begin discontinuance of services immediately. Disconnection of LifeConnex service will affect less than 2,200 Kentucky customers.

Under terms of their agreement, LifeConnex is solely responsible for notifying its end users of the proposed service disconnection. AT&T Kentucky is copying LifeConnex to remind them of their obligations to notify their end users of this situation regarding pending disconnection of services.

Should the Commission determine the need to invoke AT&T Kentucky's Emergency Service Continuity Tariff, AT&T Kentucky will take steps to notify the affected end users and inform them that they may continue to receive telecommunications services through The Emergency Services Continuity Plan for a minimum of fourteen (14) days and that the end user must transition to a new service provider.

If there are any questions or the need for additional information concerning this filing, please call me at 502-582-2164.

Very truly yours,



Tony Taylor

cc: Edward Heard
LifeConnex Telecom, Inc.

Honorable Mary K Keyer
General Counsel/Kentucky
BellSouth Telecommunications, Inc. dba AT&T
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